

**TESTIMONY
OF
WILLIAM S. HAINES, JR.
Deputy Freeholder Director of Burlington County, NJ
BEFORE THE
RAILROADS SUBCOMMITTEE
OF THE HOUSE TRANSPORTATION AND INFRASTRUCTURE COMMITTEE
ON THE MATTER OF THE
“IMPACTS OF RAILROAD-OWNED WASTE FACILITIES”
Tuesday, May 23, 2006**

Thank you, Chairman LaTourette, and Members of the Committee, for providing me the opportunity to provide comment this morning.

I appear before you today on behalf of the Burlington County Board of Chosen Freeholders, in support of H.R. 4930, sponsored by Congressman Saxton.

For the record, the Burlington County Board of Freeholders is a five-member board charged with the administration of County government. All freeholders are elected at large.

Burlington County is geographically the largest County in New Jersey, with a population of 450,000. We are renowned for our Pine Barrens and other vast open spaces. But it is a situation within the population center of our County that I wish to address.

Over the past several months an entity known as Hainesport Industrial Railroad LLC has been seeking to operate a waste transfer facility within an industrial park located in the municipality of Hainesport Township.

It has been a matter of discussion, debate and even negotiation between the railroad owner and local officials as to the operating parameters, as well as to the types of waste which would be trucked into the industrial park, loaded on to rail cars, and shipped across the County to locations beyond New Jersey.

This proposal has been the source of public outcry, particular from residents whose homes border the industrial park. At the same time, we are advised that local officials in other municipalities – through which the rail cars will pass – are girding for a fight, and are intent on protecting the health, safety and welfare of their residents as well.

However, hanging over all discussion, all debate, and all negotiations, is the phrase “federal preemption.” It is the railroad owner’s trump card.

Or, as the committee is aware, federal law presently exempts rail carriers from State or local permitting requirements related to the processing and transporting of solid waste.

Hainesport Industrial Railroad received its Verified Notice of Exemption from the federal Surface Transportation Board on May 10, 2005.

From our position as County officials, and from the viewpoint of the elected officials in our local communities, this type of exemption, and the federal preemption that flows from it, flies in the face of what we come to regard as home rule. It guts local governments’ ability to fulfill their obligations to protect the health, safety and welfare of their residents.

The siting of any type of waste facility should not be taken lightly. The very nuisance and health issues related to odors, dust, traffic, and noise invite scrutiny, and demand that State regulations, County requirements, and local ordinances be followed.

Our position is that no aspect of what we know as the regular Solid Waste, Zoning and other recognized permitting processes should be waived.

Mr. Chairman, as a result of recent experiences involving another waste facility, I can not underscore enough the importance of these permitting processes.

Presently, the freeholder board is engaged in a two-year legal and administrative battle in concert with the State of New Jersey to shut down another waste operation in our County. This composting operation was granted State permit. Yet obnoxious odors and other environmental complaints have resulted in dozens of violations and hundreds of thousands of dollars in fines.

Ironically, unlike the Hainesport facility, this other operation is located in a rural community. But the odor complaints have come on a regular basis from residents far and wide. The State is methodically following legal procedures for lifting the permit and closing this facility while the residents continue to suffer.

I only mention this because again, it underscores the importance of proposed waste facilities passing the “smell test,” not to mention every other aspect of law that protects the public, including the right of State and local government to impose its statutes and ordinances.

This example also points out that – even when the appropriate permitting processes are followed -- facilities can go bad, and addressing the problems are not simple.

While the actual siting of any commercial operation falls largely on local government in New Jersey, when it comes to waste facilities, the County is also engaged.

Under State law, all proposed waste facilities, or even proposed changes in operation and types of waste accepted, must be reviewed at the County level. This review culminates in a public hearing before a Solid Waste Advisory Committee.

This advisory board hears testimony from the public and all interested parties, weighs those comments and the evidence provided, and makes a recommendation to the State as to whether the proposed facility or change of operation should be granted.

The advisory committee was originally created under State law with an eye toward ensuring that Counties have jurisdiction over their own solid waste plans. That is, it was the State’s sanctioning of the very home rule that we seek to protect today.

Because of existing federal law, not even this County advisory board is afforded the opportunity to review the situation in Hainesport.

All of this considered, that brings me back to the proposal by Hainesport Industrial Railroad. I would be less than candid if I did not represent to you that the primary operative for Hainesport Industrial Railroad is a respected businessman. He has made representations that his waste facility will comply with State environmental law. That notwithstanding, businesses exist to make a profit.

The bottom line is that late last week Hainesport Township officials found themselves in a situation where – because of the federal preemption – they were under pressure to make a “deal.” They had no hammer, no ordinance, no regulation, to put up against Hainesport Industrial Railroad.

Facing what it foresaw as a difficult legal battle, Hainesport Township entered into an agreement with the railroad purportedly limiting its operation to construction and demolition waste.

How well that agreement will stand the test of time is already an item of public debate. And the specter of the facility handling regular solid waste – garbage – at some time in the future, or hazardous or medical waste or other types of waste, still generates grave concern.

I know that Burlington County is not alone, that other jurisdictions have faced similar dilemmas. It is a legitimate problem that H.R. 4930 addresses, and we are grateful to Congressman Saxton for introducing the legislation.

Once again, I ask for the committee's favorable consideration. And I will endeavor to answer any questions you may have.

Thank you very much.